

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

PENTHOUSE OWNERS ASSOCIATION, INC.

PLAINTIFF

V.

CIVIL ACTION NO.1:07CV568 LTS-RHW

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

DEFENDANT

**MEMORANDUM OPINION AND ORDER ON MOTION *IN LIMINE*
TO EXCLUDE TESTIMONY OF ROBERT WARD**

The Court has before it the motions [276] [282] *in limine* of Penthouse Owners Association, Inc. (Penthouse) to exclude certain anticipated testimony of Robert Ward (Ward) concerning the value of the insured property. These motions will be denied.

Ward was Penthouse's insurance agent prior to 2004. He had no involvement in the purchase of the coverage at issue in this action. He worked with Penthouse in securing property insurance in earlier years, 2003 and 2004, according to Ward's testimony. Ward has acknowledged that he has no expertise in the appraisal of real estate, and he has acknowledged that he has not seen an appraisal of the insured buildings. It is for these reasons that Penthouse seeks to exclude his testimony.

Even with the limitations Ward has acknowledged, he may yet have information that is relevant and admissible concerning the disputed issue of the value of the three insured buildings at the time of loss. As Penthouse's agent in prior years, Ward may have information concerning Penthouse's own estimates of the value of their property. The years in which he acted as Penthouse's agent are not so remote in time as to suggest that the value of the insured property may have changed sufficiently to make the evaluations, if any, made during Ward's tenure as Penthouse's agent misleading or irrelevant.

At this juncture, I have no indication, other than the deposition excerpts Penthouse submitted in support of its motion, of the information Ward may have to offer. I will, therefore, deny the Penthouse motion and allow Ward to testify to any relevant facts of which he may have first-hand knowledge. In light of Ward's testimony he would obviously not be in a position to venture an estimate of the value of the insured property or to testify about any appraisals that may have been done by others.

Accordingly, it is

ORDERED

That the motions [276] [282] *in limine* of Penthouse Owners Association, Inc., to exclude the testimony of Robert Ward are hereby **DENIED**.

SO ORDERED this 9th day of March, 2009.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE